IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO: 23086 of 2002

Between:

D.Ramakrishna s/o Rama Rao
Agriculture Research Station, Warangal District

.... PETITIONER

AND

Registrar Acharya N.G.Ranga Agricultural University
Rajendranagar, Hyderabad

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction especially one in the nature of Writ of Mandamus declaring that Memo.No.17957/Ser.III (A1)/2001 dt.22-3-2002 is illegal and arbitrary violative of Articles 14 and 16 of the Constitution of India and further declare that Petitioner is entitled to get the period of suspension 26-7-95 to 31-12-96 treated as on duty and further declare that the action of the respondent in not releasing his annual grade increments upto 3-4-1998 as illegal and arbitrary and violative of Articles 14 and 16 of Constitution of India.

Counsel for the Petitioner: MR.M.SURENDER RAO

Counsel for the Respondent: MR.B.SIVA REDDY

The Court made the following:

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ORDER:

Heard Mr.M.Surender Rao, learned counsel for the petitioner and Mr.B.Siva Reddy, learned counsel appearing on behalf of the respondent.

2. The petitioner herein, who has been working as Junior Assistant-Cum-Typist with the respondent, files this writ petition, *inter alia* seeking for a writ of *Mandamus* assailing the impugned Memo No.17957/Ser.III(A1)/2001 dated 22.03.2002 as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and further to declare that the petitioner is entitled to get the period of suspension from 26.7.1995 to 31.12.1996 treated as on duty, and also to declare that the action of the respondent in not releasing his annual grade increments up to 03.4.1998 as illegal and arbitrary.

2. The facts in brief on which the petitioner tries to rest his claim, are that initially, he was appointed as Junior Assistant-Cum-Typist with the respondent on 15.09.1990 and posted as Cashier in the Agricultural Research Station, Amberpet, on 01.12.1990. However, he was kept under suspension as per Order dated 22.7.1995, on the allegations of misappropriation of G.P.F amount of Rs.40,600/- of Dr.V.Raja. Thereupon, a charge memo dated 22.09.1995 was issued with five different charges and an Assistant Registrar, NTE was appointed as Enquiry Officer to conduct enquiry, in respect of the said charges. The Enquiry Officer conducted enquiry and submitted a reported on 12.04.1996. On receipt thereof, the petitioner was immediately reinstated back into service, as per Order dated 03.12.1996 thereby, revoking the order of suspension, dated 26.7.1995. The case of the petitioner is that as per the enquiry report, the Enquiry Officer, after going into all the charges made against him, did not find fault against him nor fixed any liability or responsibility in respect of any amounts, except notice to the effect that there has been failure on the watch, in regard to payments to the financial institutions. Therefore, as per the said report, there was no finding as to misappropriation also as against the petitioner. However, in spite of such categorical exoneration and without fixing any liability, the

respondent issued a show cause notice on 04.04.1997 claiming Rs.1,63,000/- as the amount to be payable by the employees as not remitted by the petitioner to the credit of concerned institutions. The petitioner submitted his explanation on 16.02.1998 denying any involvement or liability as such. However, the respondent has passed order dated 03.04.1998 imposing a penalty of recovery of Rs.1.63 lakhs and withholding three annual grade increments. Challenging the same, the petitioner has filed W.P.No.17365 of 1999, wherein an interim order was passed in W.P.M.P.No.21605 of 1999 permitting recovery from the petitioner at the rate of Rs.646/- per month only, by order dated 20.09.1999. The main writ petition was disposed of with similar such direction permitting recovery of Rs.646/- per month, by order dated 28.8.2001. Subsequently, the petitioner submitted a representation dated 16.4.2001 requesting the respondent to regularize the period of suspension, i.e., 26.7.1995 to 15.12.1996 treating it as on duty. However, the request of the petitioner was rejected by Memo dated 22.3.2002 treating the above said period as not on duty. The petitioner has to file another application in W.P.M.P.No.7135 of 2002 in the earlier writ petition No.17365 of 1999 seeking clarification and also for setting aside the Memo dated 22.3.2002. On a consideration thereof, as per Order dated 28.3.2002, this Court gave a direction to the respondents to consider the case of the petitioner for regularization of the suspension period from 26.7.1995 to 15.12.1996, as on duty with full pay and allowances on par with his juniors. On appeal by the respondents, a Division Bench of this Court as per Order dated 31.10.2002, set aside the order dated 28.3.2002 holding that on technical grounds, such application does not lie in the earlier writ petition and giving liberty to the petitioner to file a fresh writ petition questioning the order dated 22.03.2002. Hence the present writ petition.

3. The main contention urged on behalf of the petitioner is that having regard to the fact that the Enquiry Officer did not find fault with the petitioner in respect of any liability or involvement as such, nor as to any misappropriation of the funds, no liability can be fastened against him and further there being no variation by the respondent, in regard to the said enquiry report and thus the question of imposing any such liability financially or even to deny the said period of suspension to be treated as on duty, is totally arbitrary and illegal apart from the fact that virtually, it would amount to double jeopardy. It is also the case of the petitioner that on either of

these cases, the respondent did not properly take into consideration the petitioner's case, especially keeping in view the enquiry report and hence, the impugned order is liable to be set aside.

4. In the counter affidavit filed on behalf of the respondent herein, the entire claim of the petitioner was sought to be denied and sought to place reliance more on the orders passed in earlier writ petition filed by the petitioner himself, wherein certain directions have been given for recovery of the amount in installments at the rate of Rs.646/- per month and further, the respondent justified the impugned action on the ground that the same is supported by F.R.53, 54-B and also G.O.Ms.No.214 Fin.&Plg (FW.FR11) Department dated 22.12.1997. Therefore, necessarily, the period of suspension cannot be treated as on duty and the punishment has been rightly imposed against the petitioner.

5. After taking into consideration the respective submissions made on either side and also on perusal of the material, the point which arises for consideration in this writ petition is as to whether the impugned order dated 22.3.2002 is legal and valid and also whether the petitioner is entitled to be treated the entire period of suspension as on duty, exonerating him from any such liability as sought to be fixed ?

6. There is no dispute in regard to the chequerred events leading to filing of the present writ petition on a second round of litigation. The petitioner, employee of the respondent herein, on certain allegations and on framing of charges, was placed under suspension by order dated 22.7.1995. Thereafter, enquiry was conducted by appointing an Enquiry Officer, who submitted his report on 12.4.1996. On receipt thereof, the petitioner was reinstated back into service as per Order dated 3.12.1996. For apt consideration of the issue involved, it is relevant to extract the charges framed against the petitioner, which reads as follows:

> CHARGE No.1:
>
> That Sri D.Ramakrishna, Cashier, Agricultural Research Station, Amberpet, encashed the cheque No.847320 dated 02-05-1995 for Rs.40,600.00 towards G.P.F amount pertaining to Dr.V.Raja, Farm Superintendent on 05-05-1995 and kept the same out of the university account resulting in misappropriation of the said amount. Instead of

disbursing G.P.F amount to the concerned G.P.F subscriber, he has resorted to giving him on personal loan of Rs.10,600.00 which is a serious irregularity.

CHARGE NO.II

Sri D.Ramakrishna, Cashier did not account for a total amount of Rs.90,172-95 realised from the cheques issued by the University/Assistant Controller(STZ) in favour of Head Agricultural Research Station, Amberpet. The said amount of Rs.90,172-95 was misappropriated by him.

CHARGE NO.III

Sri D.Ramakrishna did not disburse the amount realized by encashment of 13 cheques (mentioned in Annexure-II) to the concerned immediately after encashment of cheques.

The amounts were disbursed to the concerned with the delay ranging from 10 to 30 days. It amounts to misappropriation of University funds.

CHARGE NO.IV

Sri D.Ramakrishna has entered 2 cheques for an amount of Rs.9,700-00 in cash book which were not issued by the University. It is not known as to who have issued these cheques. He has not maintained the records properly and he has not followed the procedure prescribed in University Accounts Manual. It shows that he has deliberately deviated from the financial Rules and Procedures.

CHARGE NO.V

That Sri D.Ramakrishna, Cashier has collected the monthly instalment amounts from the concerned staff members of the Research Station towards personal loans obtained from the Private Financial Organisations like True Services, City Bank, and Leafin India Limited and he has not remitted to the concerned organizations properly and promptly and these amounts were utilized by him for personal gains. It amounts to misappropriation of Public Money.

7. It is the case of the petitioner that as per the enquiry report, there is absolutely no pointer, nor any liability is fastened on him, in respect of any amounts involved as such, nor there is any finding as to misappropriation. The petitioner states that the findings of the enquiry officer run as follows:

CHARGE NO.1

1. Amount involved has not been misappropriated

2. Cashier and the disbursing officer did not keep a proper watch over receipt of cheque and its encashment and entries made in the register.

3. Amount was paid to the concerned i.e., Dr.Raja

CHARGE NO.II

1. As against the complaint of not entering the 9 cheques in the concerned registers, the Enquiry Officer holds that 7 cheques were entered.

2. 9th cheque pertains to charge 4.

3. Entries for a sum of Rs.275.50, Rs.116.00, Rs.150.00 and Rs.58.00 were not made either by mistake or omission and therefore Rs.277.50 +Rs.116.00+58.00=599.50 shall be recovered from me.

4. The charge was recommended to be dropped.

CHARGE NO.III

1. Enquiry Officer held that there is a delay of 10-30 days in disbursing the amounts.

2. Enquiry Officer suggested a warning to be given to me to be careful.

CHARGE NO.IV

1. There is no misappropriation.

2. Charge drafted

CHARGE NO.V

1. There is failure on the part of the disbursing officer and myself in watching the remittances towards private loans taken by employees from private organizations.

2. Whatever amounts are due to be paid to the Financial Institutions be recovered from the (1) Drawing and Disbursing Officer (2) From me.

8. From the above, it is amply clear that if really the respondents sought to proceed against the petitioner on the basis of the enquiry report submitted and in respect of the charges as made against him, the respondent ought to have passed final order either way. Instead, the respondent passed order on 3.12.1996, reinstating him back into service, at which time no orders of fixing any liability or otherwise were taken into consideration nor it was felt necessary to impose any such punishment. Once, the enquiry report is accepted and the petitioner has been reinstated, any subsequent action is nothing but a repetition of the action, which has already been

initiated against the petitioner. Accordingly, on the face of it, it would amount to double jeopardy. However, be that as it may, the fact remains that subsequent to the acceptance of the enquiry report dated 12.4.1996 and reinstatement of the petitioner as per order dated 3.12.1996, the respondent has not kept in view the findings of the enquiry officer and sought to take advantage of the orders passed in the earlier writ petition, where the petitioner was permitted to pay the amounts in installments. It is the case of the petitioner that he never admitted his liability in regard to the amounts and therefore, any such order could not go against him, to fix any liability as such. Further, it is also submitted that his case was not properly considered at later stage, in pursuance of the representation filed by him on 16.4.2001. Once, final orders were passed on the said enquiry report dated 3.12.1996, it is but necessary for the respondent to take into consideration the petitioner's entitlement to the said period of suspension to be treated as on duty and also other service benefits to which he is entitled to under law, but not to impose any fresh punishment or re-impose any such liability.

9. It is also relevant to take note of the principles laid down by the Apex Court in **B.D.Gupta v. State of Haryana**, wherein it was held:

> " If order affects employee financially, it must be passed after objective consideration and assessment of all relevant facts and after giving him full opportunity to make out his case".

10. On the face of it, the respondent by taking advantage of the interim orders passed in the earlier writ petition and also under the guise of petitioner's representation dated 16.4.2001, the petitioner is sought to be mulcted with double punishment of fixing liability and also denying his entitlement for suspension period to be treated as on duty etc. It is needless to mention that on the face of the enquiry report, which has already been filed, it is not open for the respondent herein, to proceed against the petitioner, in regard to the punishment to be meted out, especially when there is no finding by the enquiry officer. The respondent has not kept in view these aspects before passing the impugned order or taking any such action, in respect of denying the suspension period to be on duty or fixing liability as such. In the circumstances, even on a reading of the impugned order, it is not stated

as to how and why the earlier enquiry was sought to be get over, and as to how the same is not binding. On the face of it, the matter requires to be considered afresh.

10. Accordingly, the writ petition is allowed and the impugned memo is set aside. The respondent is directed to consider the case of the petitioner afresh from proper perspective keeping in view the earlier enquiry report dated 12.4.1996 and pass appropriate orders in accordance with law, after giving notice and opportunity to the petitioner. No order as to costs.

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B.PRAKASH RAO, J

Dated: 15.7.2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Friday the 15th day of July, Two thousand and Five.

ASSISTANT REGISTRAR

RAR

To

1)The Registrar Acharya N.G.Ranga Agricultural University
Rajendranagar, Hyderabad

2) 2 CD copies.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO: 23086 of 2002

DATED: 15.07.2005

THE HON'BLE MR JUSTICE B.PRAKASH RAO

P.D.JUDGMENT

IN

WRIT PETITION NO: 23086 of 2002

(For Pronouncement on 15.07.2005)